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State of Florida  
**DEPARTMENT OF  
HIGHWAY SAFETY AND MOTOR VEHICLES**

TALLAHASSEE, FLORIDA 32399-0500

FRED O. DICKINSON  
Executive Director

TSA-03-14610-49

July 7, 2003

To: Docket Management System, Room PL-401  
U.S. Department of Transportation  
400 Seventh Street, SW  
Washington, DC

From: Florida Department of Highway Safety and Motor Vehicles  
Division of Driver Licenses  
2900 Apalachee Parkway, Room C410, MS100  
Tallahassee, FL 32399-0560

RE: Comments to Interim Final Rule (IFR)  
Docket No. TSA-2003-14610  
Security Threat Assessment for Individuals Applying for a  
Hazardous Material Endorsement for a Commercial Drivers License

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The Florida Department of Highway Safety and Motor Vehicles and the Florida Department of Law Enforcement (FDLE) have previously submitted a specific proposal for implementing the security check process addressed by this rule. A copy of that proposal is attached. Also attached is a copy of further comments provided for inclusion in this submission by FDLE and by Lt. Colonel Billy Dickson, Florida Highway Patrol (Ret). In addition, we offer the comments below:

1. Regarding the application form that must be completed and signed by each Hazmat endorsement applicant in accordance with paragraph 1572.5(e) of the IFR, we urge the Transportation Security Administration (TSA) to develop a means for accepting electronic submissions from the States. The benefits of a paperless system for collecting, transmitting, and storing this information are self-evident. Additionally, given the lack of time for TSA and the respective states to develop a nationwide standard technology, we urge initial flexibility in accepting electronic submissions in various formats, requiring only that commonly used computer systems be able to retrieve and reproduce a document image containing the required information, including signatures. Finally, we note that the specialized information required in the Hazmat endorsement application is not contained within the standard format for electronic fingerprint submissions. We cannot assume the State repositories of criminal history information intended to process and transmit fingerprint scan files will also transmit electronic application forms. Consideration should be given to the

ways TSA will receive these forms from the states, and match them to corresponding fingerprint scans that may be received through other channels

2. Regarding the initial phase of implementation in which TSA anticipates conducting name-based background checks on all current Hazmat-endorsed CDL holders, we understand TSA will notify both the states and the individual drivers of the three possible results: Notification of No Security Threat, Initial Notification of Threat Assessment, or Final Notification of Threat Assessment. We note that false positive indications of disqualifying conditions due to misidentification are more likely during this phase. We would anticipate that many will be appealed. If states were obliged to immediately withdraw Hazmat endorsements upon receiving an Initial Notification of Threat Assessment during this phase, a disproportionate number of those endorsements would have to be reinstated, and many drivers' livelihoods would be disrupted in the process. This is in contrast to the ongoing fingerprint-based process, in which questionable initial results are expected to be relatively rare and drivers will have had ample notice that their Hazmat endorsement may not be granted or renewed. We request a clarification, interpretation, or change in the IFR as may be needed to confirm that Hazmat endorsements need not be immediately withdrawn on the basis of results from a name-based search, unless and until the state receives a Final Notification of Threat Assessment.
3. Regarding the means of transmitting and recording the results of TSA security threat assessments, we urge development of an infrastructure and procedure that relies to the greatest extent possible on existing mechanisms of the national-level Commercial Driver License Information System (CDLIS). For example, if TSA posts the results of a driver's security check directly to CDLIS rather than directly to the state originating the application, those results will be immediately available to state licensing agencies and individual driver license offices nationwide through information channels already in place. CDLIS also serves as the most reliable indicator of a driver's current State of Record. Thus, making CDLIS the primary repository of a driver's security assessment status also facilitates active notification of the particular state needing to determine whether a Hazmat endorsement should be issued, even when that notice must be redirected because a driver has moved since the initial application was made.

Thank you for the opportunity to comment. Questions concerning this submission may be directed to Skip Hood, Coordinator, CDL and Third Party Testing, at the above address, or telephone (850)922-9064.

**FDLE**  
**Comments to TSA Interim Final Rule on Hazmat Endorsements Summary**

Docket #TSA-2003-14610; Amendment #1572-1  
RIN 1652-AA17

Below are comments to the referenced sections in the Summary of the Interim Final Rule.

**Re: Summary Statement:**

TSA is charged with serving as the primary liaison for transportation security to the intelligence and law enforcement communities. This authority includes conducting background checks on individuals in the transportation industries. The background checks may include collecting fingerprints to determine if an individual has a criminal conviction or the use of a name and other identifying characteristics to determine whether an individual has committed international or immigration offenses.

**Comment:** The National Crime Prevention and Privacy Compact Act of 1998 United States Code, Title 42, Chapter 140 Subchapter II, Sections ~14611 ~14616, requires fingerprint based checks for non-criminal justice purposes. The "may" should be therefore changed to "shall."

**Re: Summary Statement:**

This rule prohibits an individual from holding a CDL with a hazardous materials endorsement if he or she (1) is an alien (unless he or she is a lawful permanent resident) or a U.S. citizen who has renounced his or her U.S. citizenship; (2) is wanted or under indictment for certain felonies; (3) has a conviction in civilian or military court for certain felonies; (4) has been adjudicated as a mental defective or committed to a mental institution; or (5) is considered to pose a security threat based on a review of various databases. In addition, FMCSA's existing CDL regulations prohibit individuals with a CDL from operating a commercial motor vehicle if he or she tests positive for a controlled substance, or has adulterated or substituted a test specimen for controlled substances. Thus, TSA and FMCSA rules cover individuals convicted of serious felonies, aliens, individuals under felony indictment, fugitives from justice, individuals adjudicated as mental defectives or committed to a mental institution, individuals who have renounced their U.S. citizenship, and unlawful users or addicts of any controlled substance.

**Comment:** While the rule specifies "felony indictments," these criteria should include all arrests for disqualifying offenses, where the cases are pending and there is no formal indictment or other charging document (indictment seems to indicate a grand jury action when most criminal charges arise from a direct information, probable cause arrest or similar process).

**Re: Summary Statement:**

The primary basis for determining whether an individual has committed a disqualifying criminal offense is collecting fingerprints and submitting them to the Federal Bureau of Investigation (FBI) for a criminal history records check.

**Comment:** Please add the following underline language.

The primary basis for determining whether an individual has committed a disqualifying criminal offense is collecting fingerprints and submitting them to the State Repository, if the state does not opt out of such checks, and then to the FBI for a criminal history records check.

**Re: Summary Statement:**

The primary basis for determining whether an individual has committed a disqualifying criminal offense is collecting fingerprints and submitting them to the Federal Bureau of Investigation (FBI) for a criminal history records check. The process of collecting, submitting, and analyzing fingerprints is resource intensive and complex. Under this rule, TSA and the States will consult closely to determine the most efficient and cost-effective means of collecting fingerprints without unduly burdening State resources.

**Comment:** Please add the following underlined language.

TSA and the States will consult closely to determine the most efficient and cost-effective means of collecting and processing fingerprints without unduly burdening State resources.

**Re: Summary Statement** in section on fingerprint checks and retention of fingerprints:

Existing hazardous materials endorsement holders may be subject to fingerprint-based checks prior to renewal of their endorsements in a manner prescribed by TSA.

**Comment:** TSA should consider authorizing retention of the fingerprints collected pursuant to this program to states that want to participate in the retention of fingerprints for the purpose of checking new, incoming arrests against them. The agency would then provide TSA with the updated information of when a disqualifying arrest has occurred.

**Re: Summary Statement:**

After 180 days, each individual must submit fingerprints in a form And manner specified by TSA when applying to a State to issue, renew, or transfer a hazardous materials endorsement for a CDL; and at other times as specified by TSA.

**Comment:** Please add the following underlined language.

After 180 days, each individual must submit fingerprints in a form and manner specified by TSA and the rules and processes of the state of application, when applying to a state to issue, renew, or transfer a hazardous materials endorsement of a DCL.

*This should be added to all sections dealing with the same subject matter (See s. 1572.5).*

**Re: Summary Statement:**

(iii) When submitting fingerprints under this section, the individual, or his or her employer, is responsible for the fee charged by the person or other entity collecting the fingerprints and generating the individual's criminal history.

**Comment:** Please add the following underlined language.

When submitting fingerprints under this section, the individual or his or her employer will be responsible for any fee, including the state fee, that may be charges by the persons or entities collecting and processing the fingerprints.

**Re: Summary Statement:**

If an individual wishes to receive copies of the releasable material upon which the Initial Notification was based, he or she must serve TSA with a written request not later than 15 days after the date of service of the Initial Notification.

TSA will respond to this request not later than 30 days after TSA is served with the individual's request. TSA will not provide any classified information, as defined in Executive Order 12968, or any other information or material protected from disclosure by law, in its response.

**Comment:** Clarify that state intelligence information also be protected so states can share such with TSA when they have information that could pose a security threat.

**Re: Summary Statement on Fingerprinting Cost:**

**Comments:** Fees should include state fees and if necessary authorize states to assess additional fees for the capture of the prints. This would mean they could purchase live-scan technology upfront with the idea that the capture fee can reimburse the state for the equipment and maintenance...or the state could outsource the capture and assess the fee required by the private entity to collect and transfer the data electronically.

**Re: Summary Statement**

Section 1572.5

(2) In conducting the security threat assessment requirements of this section, TSA uses one or more of the following:

- (i) An individual's fingerprints.
- (ii) An individual's name.
- (iii) Other identifying information.

**Comments:** Per The National Crime Prevention and Privacy Compact Act, fingerprints must be submitted.

**From LTC (Ret.) Billy Dickson:**

**Comment:**

The Interim Final Rule does not address another issue that is viewed by law enforcement as a potentially serious public safety concern – domestic violence injunctive relief.

**Recommendation:**

It is recommended that a CDL hazardous material operator who has an active restraining order for an incident or incidents of a domestic violence injunction with an associated felony arrest for violence be prohibited from holding a hazardous materials endorsement.

**Definition of Active Restraining Order:**

An active restraining order is defined as a domestic violence restraining order issued by a court of competent jurisdiction where the holder of the CDL hazardous materials endorsement has been provided a hearing before the court and the court has subsequently issue a restraining order. A hazardous materials endorsement shall be suspended during the active period(s) of the court ordered restraining order.

LTC (Retired) Billy Dickson  
(850) 570.0456 - Cell



**State of Florida**  
**DEPARTMENT OF**  
**HIGHWAY SAFETY AND MOTOR VEHICLES**

**FRED O. DICKINSON**  
Executive Director

**JEB BUSH**  
Governor

**CHARLIE CRIST**  
Attorney General

**TOM GALLAGHER**  
Chief Financial Officer

**CHARLES H. BRONSON**  
Commissioner of Agriculture

June 17, 2003

Admiral James Loy, Administrator  
Transportation Security Administration  
HQ - West Building, 400 Seventh Street, S.W.  
Washington, D.C. 20590

RE: Document No. TSA-2003-14610

Dear Admiral Loy:

Thank you for the opportunity to inform you of Florida's plan for compliance with the letter and intent of the U.S.A. PATRIOT Act regarding background screening of commercial vehicle operators who hold, apply for, upgrade, or renew a Commercial Driver License (CDL) with a hazardous materials endorsement. As you know, Florida is moving quickly to implement the U.S.A. Patriot Act with respect to commercial vehicle drivers who are authorized to transport hazardous materials. This endeavor brings together the Department of Highway Safety and Motor Vehicles (DHSMV), as Florida's driver licensing agency, and the Florida Department of Law Enforcement (FDLE), as the state central repository of criminal history records.

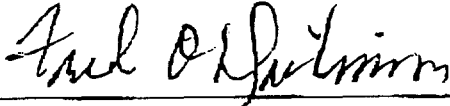
We are seeking TSA concurrence of the attached plan, which includes specific responsibilities of both the DHSMV and the FDLE. Those joint responsibilities identify a concept for active state level involvement in the upcoming Patriot Act security assessment process. Our mutual goal of DHSMV and FDLE is to provide a totally paperless process that will be secure, require only a few minutes of the applicant's time, and return results in the shortest possible time.

We believe Florida is prepared to be a leader and model of how HAZMAT endorsement background checks can be done. Your prompt endorsement of this plan will help ensure Florida establishes an effective process that can serve as a model for implementation plans nationwide. Once we receive notification of endorsement by TSA, we will notify the FBI and move forward to implement the Florida model. For your convenience, an endorsement form is included with our submission.

Admiral Loy  
Page 2  
June 17, 2003

Again, thank you for the opportunity to advance the Florida initiative. We look forward to a successful coordinated effort with DHSMV, FDLE, and our Federal partners to ensure the security of our commercial transportation system.

Sincerely,



Fred O. Dickinson  
Executive Director  
Department of Highway Safety  
and Motor Vehicles



Tim Moore  
Executive Director  
Florida Department of Law Enforcement

FOD/TM:bd

Enclosure (2)



U. S. A. PATRIOT ACT  
COMMERCIAL DRIVER LICENSEE  
HAZARDOUS MATERIALS ENDORSEMENT THREAT ASSESSMENT PROCESS

FLORIDA'S PROPOSED PROCESS

**DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES (DHSMV) PROCESS:**

Commercial Driver License applicants wishing to obtain or renew Hazardous materials endorsed Commercial Driver Licenses in Florida will begin the process in one of 70 offices to be equipped with livescan fingerprint systems. The systems are certified by the Florida Department of Law Enforcement (FDLE) and the Federal Bureau of Investigation (FBI) and the software has been tailored to provide the specific data required in the Security Threat Assessment for Individuals Applying for a Hazardous Materials Endorsement for a Commercial Driver License; Final Rule.

An applicant will first apply for the endorsement through DHSMV's field office software system for driver licensing (DL) transactions. From the driver's perspective, the Hazmat endorsement application will be similar to other routine DL office transactions. However, it accomplishes several of the basic administrative requirements for the overall security assessment process: including, confirmation of the individual's identity; securing the oath, capturing the information required in the federal rule; updating the department's central records system, and creating and tracking fees paid and pending cases awaiting results of the security assessment.

Upon completion of this transaction, drivers will have their fingerprints taken electronically by a DL examiner. The standard livescan fingerprint software is being modified to retrieve the applicants' information from DHSMV's central records, as updated by the preceding transaction, rather than through manual re-entry by the livescan operator. The operator will enter and verify only the DL number, or use a DL card reader to be supplied with these units. In addition to saving time, this feature eliminates an opportunity for misidentified fingerprint submissions that would otherwise cause later problems for both drivers and the department. It also ensures a tamper-proof link between the applicant providing the original information and the person whose fingerprints are captured.

Livescan fingerprint files will be transmitted simultaneously to DHSMV; to record completion of that step in the process, and to FDLE for the entry into the background investigation process described below (see attached flow chart). Florida proposes and strongly recommends that the accompanying data from the application form, as specified in the federal rule, also be transmitted electronically to TSA.

## **FLORIDA DEPARTMENT OF LAW ENFORCEMENT (FDLE) PROCESS:**

FDLE established the Civil Workflow Control System (CWCS) to allow for automated submission of applicant descriptive data and fingerprints from livescan devices. CWCS provides responses to these submissions frequently within one working day and within two to three working days in other cases; the responses include Florida criminal history information, national criminal history information indexed or held by the FBI, and "hot" file hits, such as warrants. Florida customers have found this system to be efficient in processing applicants since all of the information on the applicant is in a single package. This allows for complete processing rather than piecemeal processing that can occur when the state and national data are sent to the regulatory agency separately. All data are secured through the use of a certified mail system. The CWCS will ensure that TSA has complete information from which to make security threat determinations.

Because of the potential use of hazardous materials in terrorist acts, the HAZMAT endorsement applicants will be checked through specific FDLE maintained intelligence/investigative databases. These databases include GangNet, Drugnet, ThreatNet, Automated Investigative Management System (AIMS) and the Sexual Offender and DNA Databases. These checks are done through FDLE's FOCUS application, which allows names to be run against the various databases through a single name query. Criminal history record information coupled with intelligence/investigative information maintained at the state level will allow for a more effective means of assessing potential threats to the state of Florida and the country's critical infrastructure. In order to maximize the availability of the intelligence/investigative data, the name and other descriptive data from each applicant submission will be queried via FOCUS allowing for a more meaningful assessment. In addition, for each candidate who has a criminal record, alias name, and descriptive data will be pulled from the criminal record and also be queried through FOCUS. FDLE will evaluate any hit identified to determine whether it is a valid hit and whether the intelligence systems contain information suggesting that the specific individual poses a domestic security risk. If such a risk exists, TSA will be notified with respect to the status of the applicant and the appropriate Florida Regional Domestic Security Task Force in conjunction with local law enforcement will be notified for follow-up investigation.

The Florida model that we believe to be the optimum provides for complete checking of criminal records at the state. Because there are approximately 1.3 million offenders that are in the FDLE repository that are not indexed at the national level, this data can be provided only through a state check. Key information may be contained in any one of these records including convictions for qualifying crimes not listed in the FBI database. While Florida has been working to assure that all criminal warrants entered in the Florida Crime Information Center are also in the National Crime Information Center, there may be isolated incidents where this has not occurred. The state check may, therefore, also result in receipt of warrant information not available through a national

search. More importantly, FDLE has state intelligence data that will be accessed through this process. The likelihood of identifying known persons who do not have criminal records yet pose significant security threats will be enhanced.

#### **FUTURE FDLE APPLICATION:**

FDLE is developing a new integrated system, which will retain all of the data in the criminal records and the fingerprints, which will allow for better retrieval of information, and provide for additional identification of criminal records through use of fingerprints. FDLE does not currently retain fingerprints on any applicants. The Legislature and state policy makers have shown interest in FDLE retaining these fingerprints so that incoming arrest fingerprints can be compared to them. This capacity may be particularly applicable to HAZMAT endorsements because of the sensitivity of the persons with this endorsement in regard to public safety. If this is the process that TSA has chosen for HAZMAT endorsements, this is a way it could work:

- FDLE maintains a copy of the fingerprints for each HAZMAT endorsement after statutory approval is gained (not expected before 2004),
- FDLE searches the fingerprints from each Florida arrest against the retained HAZMAT endorsement fingerprints,
- FDLE notifies TSA, or agency TSA specifies, that an arrest of a HAZMAT endorsement holder,
- TSA or other agency determines if endorsement needs to be reassessed.

#### **AMERICAN ASSOCIATION OF MOTOR VEHICLES (AAMVA) - COMMERCIAL DRIVER LICENSE INFORMATION SYSTEM (CDLIS) NOTIFICATION PROCESS:**

Florida envisions an electronic notification process through AAMVA's Commercial Driver License Information System (CDLIS) for TSA's notification of final determination of applicant eligibility. Florida will use that notification process to reconcile pending applications and issue hazardous material endorsements through the central issuance process when TSA sends a notification of "No Security Threat" to the CDLIS network for an individual applicant. Applicants determined to be ineligible after a "Final Notification of Threat Assessment" will not receive an endorsement; however, individual applicants may retain a CDL without a hazardous materials endorsement when otherwise qualified.

The CDLIS will be updated by DHSMV within 15 days of the receipt of "No Security Threat" or a "Final Notification of Threat Assessment" or a "Grant of Waiver."

Florida urges TSA to develop a solution protocol with AAMVA to use the CDLIS for the notification of eligibility or ineligibility.

State of Florida  
U. S. A. PATRIOT ACT  
COMMERCIAL DRIVER LICENSEE  
HAZARDOUS MATERIALS ENDORSEMENT THREAT ASSESSMENT PROCESS

**ENDORSED:**

\_\_\_\_\_  
AUTHORIZED REPRESENTATIVE  
TRANSPORTATION SECURITY  
ADMINISTRATION

TITLE: \_\_\_\_\_ DATE: \_\_\_\_\_

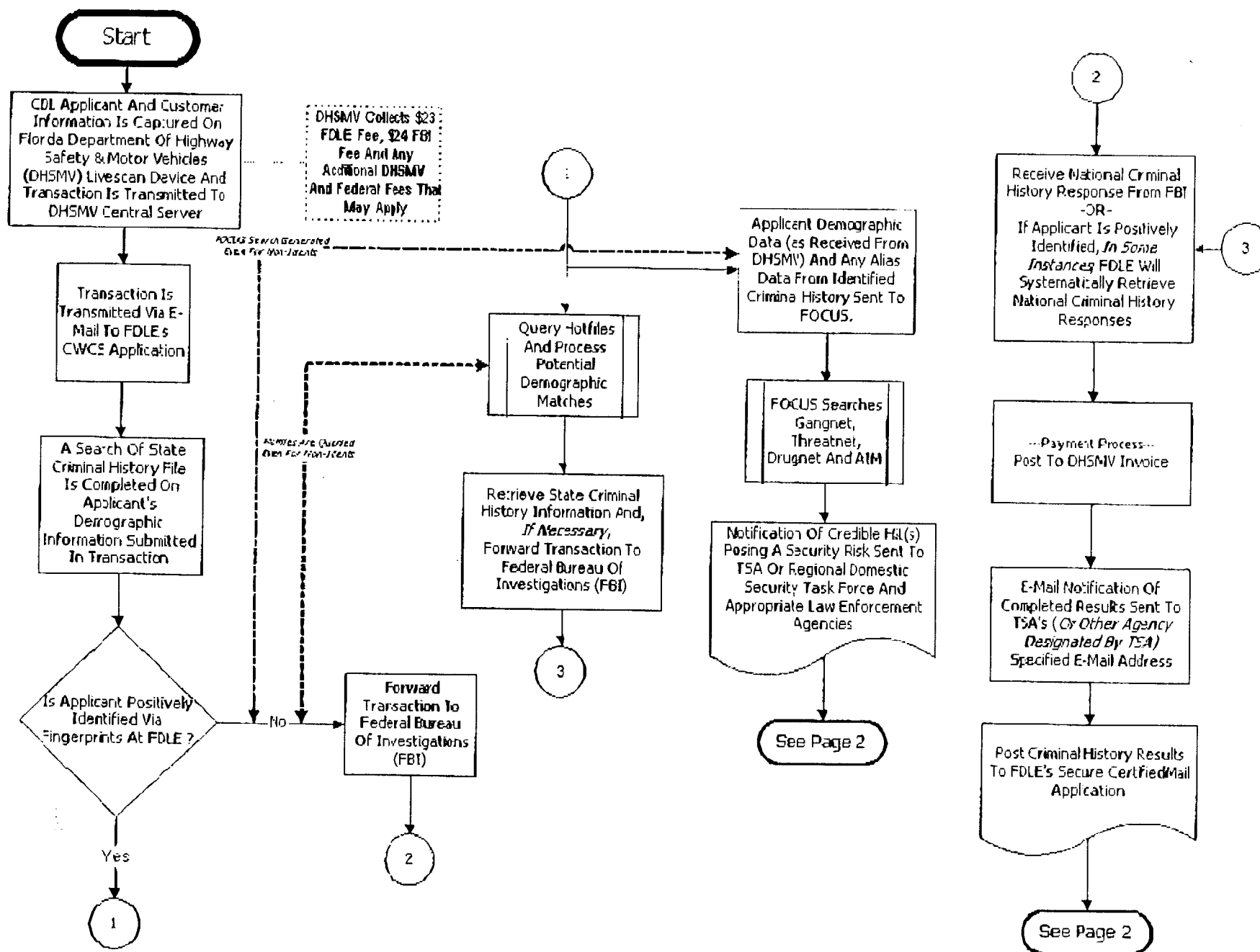
\_\_\_\_\_  
AUTHORIZED REPRESENTATIVE  
FEDERAL MOTOR CARRIER SAFETY  
ADMINISTRATION

TITLE: \_\_\_\_\_ DATE: \_\_\_\_\_



# Proposed Workflow Regarding Criminal History Checks For HAZMAT Endorsement Applicants

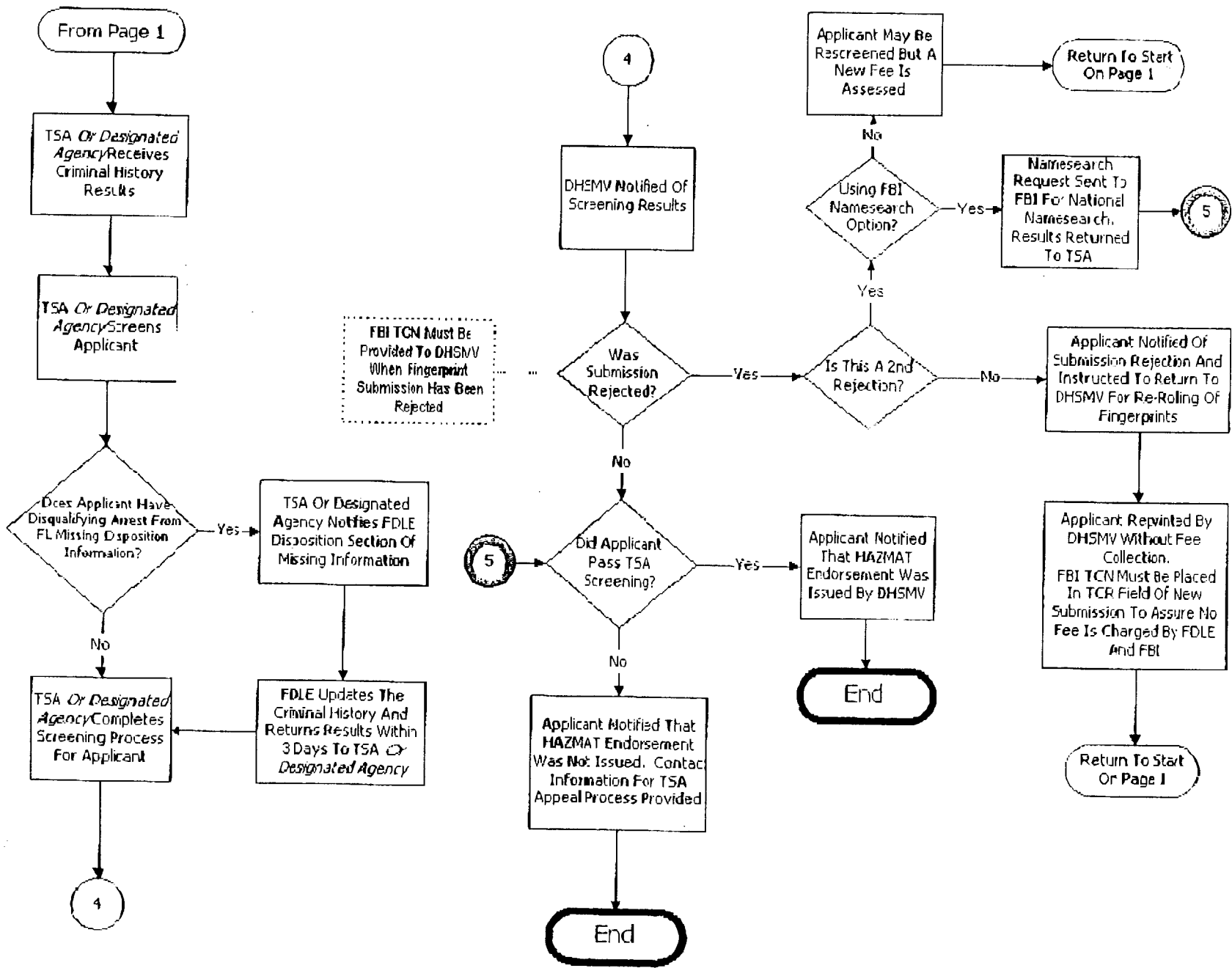
The Civil Workflow Control System (CWCS) Is An Application Developed By The Florida Department Of Law Enforcement (FDLE)  
For Processing Automated Criminal History Requests Via Fingerprint Based Livescan Technology.





# Proposed Workflow Regarding Criminal History Checks For HAZMAT Endorsement Applicants

The Civil Workflow Control System (CWCS) Is An Application Developed By The Florida Department Of Law Enforcement (FDLE)  
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DIRECTOR'S STAFF  
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